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FOI DIGEST

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Rocky and Sunny Times for Access Legislation

Access bills have been introduced in state legislatures this spring from Maine to Hawaii. The Maine bill opens public records, a few excepted, and provides that no executive session be called unless a majority vote deems it necessary and that no public business be transacted in such a session. The Hawaii bill requires that meetings and records be open "whenever possible to keep the public informed" according to an AP story. (5-12-59)

New Mexico, which had an open records law, has added to it one opening meetings of public agencies. Executive sessions are allowed, but final decisions must be made at open meetings. Grand juries are exempt from the bill's provisions, violation of which carries a \$100 fine.

With the additions of Maine, New Mexico, and Hawaii, states with both records and meetings laws now number seventeen.

Georgia has adopted an open records bill, exempting tax and juvenile records among others, that specifically provides for copying. The section providing for fines for violators was deleted. The lieutenant-governor argued that it was better there be no fine since officials might very conceivably pay the fine in order to withhold records indefinitely.

In California, the author of the multiple "Brown Act" bills, Rep. Ralph Brown, has introduced 22 new bills opening boards and commissions not covered by the earlier legislation. The state's attorney general has urged legislation to tighten the existing law which has a loophole in allowance of executive sessions without the usual 24 hours notice of meeting where information of a personal nature is to be disclosed. Evasion is a simple matter, according to the attorney general, through use of "personal affairs" plea as a vehicle for discussing other problems behind closed doors.

Access bills still pend in New Jersey and Colorado.

Access bills did not survive in West Virginia, Wyoming, and Texas. The Wyoming bill was strong and simple, stating that "every public board, elective or appointive, shall sit with open doors and all persons conducting themselves in an orderly manner may attend their meetings."

(For a round-up of anti-secrecy and allied laws pending in 27 states, see *APME Freedom of Information 1959 Bulletin No. 2*.)

About the Digest

Though this issue is Vol. I., No. 1, the *Fol Digest* is a continuation of unnumbered mimeographed sheets bearing that title issued by The National Editorial Association since 1955.

The *Digest* will be issued bi-monthly for the foreseeable future with an unspecified number of pages. No claim of timeliness can be made.

There will be errors. There will be corrections of errors when they are pointed out. There will be omissions. They will be filled in to the extent interested persons forward them to the *Digest*.

Suggestions for change and improvement will always be welcome.

Moss Discusses Value Of 5 USC 22 Amendment

Amendment of 5 USC 22, Rep. John E. Moss told a meeting of the Pennsylvania Newspaper Publishers Association (5-15-59), has not, it would appear, resulted in the release of "a single document, not one bit of information."

The value of the "housekeeping statute amendment," Moss said, lies in removal of a withholding crutch previously employed by bureaucrats, forcing them to lean heavily now on the plea of "executive privilege;" i.e., "...they need no law to cloak their activities."

"...the battle lines in the fight for freedom of information are clearly drawn after a four-year study by the House Government Information Subcommittee. Now it is up to the editors ... of every home town newspaper in the nation ... to decide whether they are going to continue the fight or be satisfied with current achievements," Moss said.

Secrecy in Congress

Figures compiled by *Congressional Quarterly* show that from the time of Congress convening until the Easter recess 274 of 849 committee meetings were held behind closed doors. Thirty-four percent of the committee meetings open to date in 1959 contrasts with the 32 percent open in the '57-'58 session. In '55-'56 the meetings were open 30 percent of the time.

Herbert Brucker, retiring ASNE *Fol* Committee chairman, observed Congress was doing a good job in cutting down secrecy in the executive branch of government, not so good a job in putting its own houses in order.

Congressional practice of not disclosing payrolls and office expenditures provoked a storm of criticism this spring. A Scripps-Howard reporter, Vance Trimble, asked the courts to force the Senate to reveal these records. The ASNE petitioned both houses to do so. Referring to the Trimble suit, an assistant U.S. attorney-general doubted the courts had the power to compel disclosure by the Senate.

Governors Endorse *Fol*

A privilege chief state executives would avail themselves of, apparently, is keeping the channels of information open — except ...

Ohio's DiSalle has established precedent by allowing the press to sit in on cabinet meetings. Del Sesto of Rhode Island (which has no access statute) said recently that all records of the state are available for the inspection of any interested reporter or citizen.

Governor Brown of California has lately endorsed the people's right to know, but he has ordered executive branch department heads not to talk until the administration's attitude has been decided at "executive level."

In Wisconsin Governor Nelson has issued an *Fol* code for his administration listing these exceptions: no statement that might prejudice a court or quasi-judicial proceedings before or after hearings; no release of histories or data that might "unduly damage reputations"; no discussion of personalities in personnel actions or training sessions involving state employees; no release that would impair the state's bargaining power in purchasing; and, finally, no information specifically shut off by statute.

"Parents, TV Censors, Inc.," is backing a bill introduced in the Minnesota legislature that would prohibit programs dramatizing "bloodshed, lust or crime" between the hours of 7 a.m. and 9 p.m.

In Courts and Out; Lensmen's Tribulations

The see-saw affair between judges and lawyers and photographers continues.

A Florida judge rules no pictures on the courthouse square while a Georgia judge finds "no merit" in a press association contention his bar against photography on streets and sidewalks adjacent to a courthouse was improper.

A Florida photographer pays \$10 for taking a picture of a Negro defendant against order of the court. Three criminal court judges cite the Baltimore *Sun* for contempt following publication of a picture of four witnesses called by a grand jury. A Tennessee TV reporter-cameraman draws 10 days (sentence reduced to 5 hours, 40 minutes) for making pictures of a courtroom in recess. An Ohio photographer learned from an appellate court that pictures he took through a courtroom's windows were not, as charged by the judge in the room, in contempt of court.

The full photo coverage of the Connie Nicholas murder trial in Indianapolis is called "exemplary" by the judge.

A Texas bar association official states improved photographic equipment cuts all valid ground from ban by judges of courtroom photography or broadcasts.

The American Bar Association is not agreed on this. Once again the Canon 35 committee will report on the "basic problems involved" come the ABA annual session at Miami, Aug. 24-28.

Meanwhile, ABA and news media representatives meeting in Washington (5-22-59) decide, subject to approval of their organizations, to ascertain the possibility of conducting a study on the effect of photographic and broadcasting apparatus on the conduct of a courtroom trial.

* * *

Joseph Costa, board chairman of NPPA, told a Northwestern University short course for newsmen in crime analysis that the American Bar Association insists on banning photography from the courts because the association "is prejudiced against all media."

At the same session, Illinois Supreme Court Justice Walter V. Schaefer said he felt the press generally did not have a right to attend trials and in some cases impaired a fair trial.

"When freedom of the press is in conflict with the man's right to a fair trial, the decision is an easy one," Justice Schaefer said. "The fair trial will prevail."

New York has again deferred for a year an act that would guarantee secrecy in juvenile court proceedings for delinquents up to 20 years old.

Little Confidence Held for Confidence Bills

Bills guaranteeing right of the reporter to keep his source confidential have not fared any better in the various legislatures than did Marie Torre's suit. (An article by Miss Torre — "Did I Go to Jail for Nothing?" — appeared in *Look*, May 26.) Newsmen generally have condemned the bills.

The American Civil Liberties Union's Board of Directors has recognized a dilemma for which, at least for the present, legislation offers no solution. "On the one hand," the ACLU says in *Civil Liberties*, (April 1959), "there is the vital public right . . . to the freest and fullest flow of information On the other hand . . . the vital public and private right to the unhampered administration of justice . . ."

Reporter's confidence bills have been killed recently in North Dakota and Illinois. No support was given proposed legislation by the Connecticut Daily Newspaper Association. Vermont newsmen called "special privilege" legislation "a legal crutch for mediocrity or incompetence."

A committee of the Minnesota legislature has recommended passage of a watered down confidence bill providing for disclosure after appeal to a district court.

Opposed to the New York bill is the State Council of Churches, its opposition based on the belief that the privilege would cause "much of the press" to "become thoroughly irresponsible."

On the federal level Rep. E. Ross Adair has introduced a bill protecting the reporter in federal courts except where national security requires disclosure. In this he follows Sen. Kenneth B. Keating who originated a bill in the upper house.

UNESCO May Act on FoI Convention in July

UNESCO may take action on a freedom of information convention at its Geneva meeting in July, the council agreeing in April to put a declaration sponsored by the United States on the July agenda.

Major points of the declaration: free speech and unfettered access to news are the rights of all people; no government monopoly of news; full knowledge to all of the UN and its associated groups; and the responsibility of all media to report honestly and fully subject only to the demands of security, decency, and the rights of individuals and nations.

Though the matter of an FoI convention has rarely failed to be discussed at UN meetings, no agreement has ever been reached. The United States is pushing this particular declaration to head off others that are pending which are violative of the First Amendment.

Indirect Controls Lurk Beneath 'Innocent' Bills

Much federal legislation concerned either directly or indirectly with advertising and marketing is inspired by the Congressional desire to relieve the plight of the small businessman, Edmund P. Hennelly, Socony Mobil attorney, told the Magazine Publishers' Association spring conference. (5-4-59)

These "panaceas," he said, would "harm, not big business, but all business."

For example, a bill is before Congress that would force a manufacturer who lowers his price in one area to meet competition there to offer the same low price to dealers in all areas. Result, if such becomes law, would be the manufacturer's abandonment of certain areas with a concomitant decrease in advertising.

Another bill, S. 1046, would eliminate the so-called "12-man forestry exemption" of Section 13 of the Fair Labor Standards Act. Innocent to the ear, innocuous to the eye, but one paper company told the speaker that elimination of the exemption would increase the company's cost of doing business by \$15 to \$20 million annually, a cost that would have to be passed on to paper users.

Hennelly concluded, "The challenge . . . is this: Every bill in Congress which affects freedom from unreasonable restraint of responsible business affects your freedom — even if the bill has no remote connection with freedom of the press. Economic freedom and political freedom are inseparable. . . ."

Notes from the Americas

The Cuban Union of Graphic Arts has demanded that at least two newspapers change their editorial policy to one of more active support of the Castro government. Union also is reported to have demanded removal of personnel allegedly Batista-soiled.

Paraguay, under a dictatorship that seems to be modifying its pressure, announces plans to abolish laws restricting press freedom.

Santo Domingo, declaring a state of emergency, empowered Dictator Trujillo to suspend all constitutional rights (April 1959)

Information Available Unless . . .

"How free is the U.S. government with press information?" Rep. John E. Moss asked in an appearance before the Aviation Writers Association. (5-2-59)

For his question, here is Moss' answer:

"An official of a federal agency makes information about the operations of government freely available to the press. . . .

"unless the information is restricted on grounds of security;

"unless the information is specifically restricted by law; such as personal income tax returns and trade secrets;

"unless the official decides that the information is merely 'preliminary';

"unless the official decides the information is part of an 'internal' document;

"—unless the official believes the information would cause 'controversy';

"—unless the official believes release of the information is not 'timely';

"—unless the official believes that the information might be 'misunderstood' or 'misinterpreted' by the people of the United States;

"—unless the official believes the information might cause a 'publicity build-up';

"—or unless he feels merely that release of the information would not be 'in the public interest.'"

"These are not exceptions," Moss said, "which I have dreamed up; each of them has been cited. . . ."

An Evanston (Ill.) citizens committee hopes to enlist 300 civic, educational, and religious organizations in a crusade against obscene literature. The committee includes leaders of (local) 20 organizations, among them the PTA, WCTU, and the NAACP.

4th IPI Survey Lists Pressures on Press

The International Press Institute has published its fourth survey under the title "Government Pressures on the Press." (130 pp.)

The study, covering the years 1951-1955 and embracing most countries not under total dictatorship or at war, divides the pressures between those based on law and those tracing to the manipulation of such economic and political realities as subsidies and bribes, distribution of newsprint and official advertising, and so forth.

The study concludes a free press depends on two conditions: that newspapers of a country receive equal treatment politically and economically as well as legally and that journalists answer to the same laws and enjoy the same legal safeguards as other citizens.

Articles and Books

Ageorges, Joseph. "Le secret professionnel des journalistes." *I.F.J. Information*, Jan-May 1959 (Vol. VIII, No. 1-2). pp. 19-22.

Argues that his obligation to further the ends of justice as a citizen transcends the journalist's claim to privilege to protect source, that the journalist does not have the moral obligation to protect source incumbent on churchmen and doctors. A reprint of a speech made in 1950 called "a masterpiece in the field of the evolution of the doctrine of the professional secret of journalists."

Brickman, David. "Sanctity and Sources." *The American Editor*, April 1959 (Vol. III, No. 1). pp. 27-34.

Contends privilege to protect source might be to assume a degree of professionalism with inherent restrictions not to best interests of a free press. Immunity may cause loss of regard of the public which does not want newsmen to claim any special privilege. Would trust courts that have shown no disposition to force disclosure and the self-sufficiency of the press. Concludes: "The confidence fight is, in truth, a kind of silliness which ill befits the inheritors of a free press in a free society. The public knows it; why don't we?"

Hennings, Sen. Thomas C., Jr. "Secrecy—Threat to Freedom," *The Progressive*, April 1959 (Vol. 23, No. 4). p. 21 ff.

Restrictions on freedom of informa-

tion said to take variety of forms—outright suppression, delay, distortion, misstatement of fact. Repeats the Senator's four-point program for combatting undue secrecy: 1) amendment of the public information section of the Administrative Procedures Act; 2) formulation of a "Code on Executive Privilege"; 3) development of a federal public records law; and, 4) continued congressional surveillance of the information practices of the federal government.

Kraft, Joseph. "The Dangerous Precedent of James Hagerty." *Esquire*, June 1959 (Vol. 51, No. 6). pp. 91-94.

Tough, inelegant, professionally able Hagerty is accused of managing the news to put the White House in the most favorable light, to build the President's "ratings."

Mollenhoff, Clark R. "The Washington Front." *ASNE Bulletin*, April 1, 1959 (No. 419). p. 12.

Raises questions concerning reporter confidence bills: 1) couldn't there be abuse of a law that gives privilege to all engaged in various newsgathering activities; 2) does the press need this confidential status; and, 3) is the press in a position similar to the lawyer with his client and the doctor with his patient?

O'Brien, The Rev. John A. "The Church and Censorship." *Our Sunday Visitor*, April 5, 1959. p. 1ff.

Through the National Legion of Decency and the National Office for Decent Literature the Catholic Church speaks out in favor of good morals as it appraises—and does not censor—books, movies, and plays. Repeats

arguments for freedom as doing what one ought to do.

Rovere, Richard. "Letter from Washington." *The New Yorker*, May 16, 1959 (Vol. XXXV, No. 13). pp. 92-103.

Admits a secrecy problem exists in government but suggests "Mr. Wiggins . . . may be laying it on a bit thick in talking of a 'raging impulse toward secrecy'." Questions interpretation of First Amendment as covering right to access and cites limited references in the Constitution requiring officials to release information. Says ". . . no evidence to show that public men clam up for flimsier reasons than public men of the past . . ." and that there is ". . . a good deal of evidence on the decline of secrecy through government."

BOOKS

Cater, Douglass. *The Fourth Branch of Government*. New York: Houghton Mifflin Co., 1959 (May)

Takes as thesis proposition the power of the press has advanced it from the Fourth Estate to the Fourth Branch of government. By emphasis, editing, and suppression, press said to have power to change course of national events. Discusses leaks, Presidential press conference, FoI at national level. Material appeared earlier in *The Reporter* magazine.

Smead, Elmer E. *Freedom of Speech by Radio and Television*. Washington, D.C.: Public Affairs Press, 1959. 182 pp.

Emphasizes the FCC's relations with the TV-radio industry. Discussion of leading cases illustrates such problems as program balance and the "equal time" holding.

Price Ad Bans Sought by Pro Groups

State professional associations have been busy in the state capitals this legislative season. Much of their interest has hovered over suggested statutes prohibiting price advertising.

The professions argue that such advertising is unethical, unprofessional. Opponents argue the professions should police their own associations (the Academy of Medicine at Cincinnati doing so by telling its members to stop the practice of inserting vacation notice classifieds) and not rely on legislation to do so. Others see the proposed legislation as an attempt to stifle competition, to cut down on the bigger boys in the professions who can afford more extensive display.

Bitterly opposed by the Ohio Newspaper Association, a chiropractors' anti-advertising bill has become law.

Ohio has a freedom to advertise bill pending, though whether time remains for action on it is questionable. Governor DiSalle recommended it in signing the chiropractors' bill for which he had little favor.

He said, "Certainly no person should have the right to advertise fraudulently or to misrepresent to the general public. [Ohio has the full Printer's Ink Statute on the books.] Certainly no person who indulges in the practice of a profession should violate the ethical practices of that profession. But to by law create situations whereby the public might be victimized or prevented from knowing the price and the availability of various commodities which . . . are not injurious . . . should not be condoned by legislation."

The optometrists have price-banning bills before Pennsylvania, Missouri, and Colorado legislatures. A bill to ease control of funeral home advertising has been defeated in West Virginia.

In Wisconsin the Supreme Court has overruled the optometric board's suspension of an optometrist's license on the grounds he used advertising in his business. The board's code, the court stated, had no legislative backing. (Other state courts have backed the board's suspension rights on the ad score.) A bill to prevent dental advertising in Oregon never got out of committee.

'Legal' Punishment

Editor and Publisher (5-9-59) says the mayor of Alexandria, Va., has asked that the city withhold legal advertising from the *Gazette*. The mayor is quoted as saying: "I am not trying to suppress news, but I don't see why we should spend several thousand dollars a year in a paper which has taken a position of trying to hurt us in our negotiations with the water company."

The Book Beat

State legislative groups and other interested people are taking a long look once more at textbooks.

A bill has cleared committee in Florida that would prohibit from school use books by Communists, former Communists, members of subversive organizations, and those who take the Fifth. (The state prison at Raiford, Fla., received 20,000 new books from the Volunteers of America—none on firearms, gunpowder, or medicine.)

On complaint of a member that "subversive" pro-integration literature was seeping into the schools, the Georgia Board of Education voted power to its literary committee to approve or disapprove all books used in school libraries.

The North Carolina Press Association has appointed a special committee to investigate texts used in that state.

A bill to forbid texts teaching evolution was defeated in Missouri.

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On outside-the-school reading:

The Federal Customs Bureau has admitted a French press edition of Henry Miller's *Tropic of Cancer* for literary and scholarly purposes. The Post Office Department has its hands full (20-odd cases) of the unabridged edition of *Lady Chatterly's Lover*. The P.O.D. enjoys uncertain powers as censor but *The New Yorker* magazine, refusing an ad for the book after an "off-the-record warning" from the department, said, wherever the location of its tongue, "We were frightened no end."

Locally, the Social Action Committee of the Casper (Wyo.) Federation of Churches, set up as a censoring board to rule on the fitness of magazine stand literature, drew this assessment from an editor: "something akin to a lynch mob in its legal status."

The Arkansas Minutemen Association has labeled "The Diary of Anne Frank" and eleven other books as "contrary to the public's best interest."

In Oregon a judge decided that the state's obscenity statute had no constitutional status and declared it void.

The *Daily Times* of Watertown, N.Y., reported a "quiet campaign" under way to remove from circulation books held unfit for juvenile reading by the National Office of Decent Literature. The NODL list was circulated to about 80 book and magazine dealers. (Such use is contrary to the expressed desire of NODL.)

MPA Fixes Eight Major Ad Threats

A survey by the Magazine Publisher Association, Inc., fixes eight major fronts upon which advertisers face trouble in Washington.

With support from the courts and Congress the Internal Revenue Service continues to narrow the definition of advertising expenditures properly counted as tax deductible.

The Federal Renegotiation Board is renegotiating defense contracts believed too costly has disallowed \$370,000 spent by Boeing to keep its name before the public.

The Federal-Aid Highway Act sweetens the treasuries of states who restrict outdoor advertising along highways built under the act. (Many states have enacted or are in process of enacting statutes satisfying the federal requirement. Missouri's Roads Committee killed a billboard controls bill, however, and Florida is expected to prefer its billboards over Federal cash.)

The Patent Office has banned advertising by patent agents. The courts have approved.

Counted by MPA a threat to advertising is Post Office Department pressure for increase in first class mail which may reasonably be expected to drive up second and third class costs. Also backed by the P.O.D. is the threat of the Rhodes Amendment requiring second-class users to pay their "total costs" as determined by the P.O.D. cost finding system except for the first \$100,000 of "subsidy". A clear threat to advertising is in the P.O.D. wish to increase third-class costs to point of reducing the volume of mail.

Finally, there is the perennial threat to the advertising of alcoholic beverages.

(Out in Oklahoma, where liquor was voted in but liquor advertising was voted out, the legislature has authorized brand name liquor advertising.)

In the face of these threats Rep. Bob Wilson urged in a speech before the AAAA that the ad industry establish a Washington office to do an "educational" not a "lobbying" job for advertising.

"The hard facts of news are threatened, moreover, even in the United States where we find increasing suppression of news on the national, State and local levels; the sugar-coating of facts by the rise of press agency, the decline of good old-fashioned legwork reporting, and Government domination, restrictions, secrecy and censorship." — John F. Tims, Jr., president of the *Times-Picayune* Publishing Co., at Caribbean area press conference, International House, New Orleans.